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Gambling Commission
Comm. & Legal Division

STATE OF WASHINGTON
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE WASHINGTON STATE GAMBLING COMMISSION

In The Matter Of the Revocation of the
License to Conduct Gambling Activities
of:

THIEN D. NGUYEN
Ferndale, Washington

Certification No.: 69-34773

OAH Docket No. 2014-GMB-0007
GMB No. CR 2013-02152

INITIAL ORDER REVOKING
GAMBLING CERTIFICATION

TRANSLATION INTO VIETNAMESE
If You Need A Vietnamese Translation Of This Order, Call:
Paul Minh Tu at (206) 235-7445

Administrative Law Judge John M. Gray conducted an administrative hearing in this matter on July 16, 2014, at the Gambling Commission Office, 4565 7th Avenue, Lacey, Washington.

Gregory Rosen, Assistant Attorney General, Attorney General's Office, appeared and represented the Washington State Gambling Commission ("Commission"). Special Agent Tyson Wilson testified on behalf of the Commission.

Thien D. Nguyen ("Mr. Nguyen"), the licensee, failed to appear at the hearing and did not contact the Office of Administrative Hearings (OAH") or the Commission to seek a continuance. No one else appeared on behalf of Mr. Nguyen.

PROCEDURAL HISTORY

On November 26, 2013, the Commission issued the Notice of Administrative Charges and Opportunity for an Adjudicative Proceeding ("Notice of Administrative Charges") to Mr. Nguyen. The Commission served two copies of the Notice by mailing

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them to Mr. Nguyen, one copy of regular United States mail and the other copy of certified mail on November 26, 2013.

On December 16, 2014, the Commission received Mr. Nguyen's Request for Hearing and Interpreter Form. Mr. Nguyen stated that he did not want a hearing. Consequently, he also did not ask for an interpreter.

The undersigned ALJ held a prehearing conference on April 8, 2014 at which both parties appeared and participated. The undersigned ALJ made a discretionary ruling regarding Mr. Nguyen's Request for Hearing and Interpreter Form where Mr. Nguyen stated he did not want a hearing. At the prehearing conference, Mr. Nguyen affirmed that he wanted a hearing and that he checked the wrong box due to the Vietnamese-English language barrier. The undersigned ALJ ruled that Mr. Nguyen wanted a hearing. The hearing date was scheduled for Wednesday, June 11, 2014, starting at 9:00 AM at the Commission's hearing room in Lacey, Washington.

On April 14, 2014, the Commission issued an Amended Notice of Administrative Charges and Opportunity for an Administrative Hearing. The Amended Notice reflects the change in Mr. Nguyen's underlying criminal case.

On June 11, 2014, Mr. Nguyen did not appear for the hearing. Both the Commission and OAH received telephone calls from Mr. Nguyen's sister, who represented that Mr. Nguyen was so ill that he could not appear that day for the hearing. The undersigned ALJ treated the sister's telephone call as a motion for a continuance and ordered the hearing continued to Wednesday, July 16, 2014, starting at 9:00 AM at the Commission's hearing room in Lacey, Washington.

At the hearing on July 16, 2014, the Commission offered Exhibits 1 through 6, which the ALJ admitted without objection.

Mr. Nguyen failed to appear and offered no exhibits.

Special Agent Wilson was sworn before he testified.

The Administrative Law Judge, having considered the evidence, now enters the following Findings of Fact:

FINDINGS OF FACT

1. Mr. Nguyen possesses certification no. 69-34773 authorizing Class III employee activity, issued by the Commission, and worked at the Nooksack River Casino in Deming, Washington. The certification no. is 69-34773 and is a type 69. Without more, the license would have expired on December 9, 2013, at midnight.

2. Kevin Wilson is a Special Agent employed by the Commission. He has worked for the Commission for over eight years. He is assigned to the Criminal Investigation Unit. He has had training in his job that includes the use of the Judicial Information System ("JIS") and SCOMIS, data bases containing information about cases in Washington courts and that is provided online through the Administrative Office of the Courts. Special Agent Wilson has a degree in Criminal Justice from Eastern Washington State University. Special Agent Wilson reviewed the file and testified at the hearing because Special Agent Julie Sullivan was unavailable to testify.

3. Julie Sullivan is a Special Agent employed by the Commission. On November 18, 2013, Special Agent Sullivan opened an investigation into allegations against Mr. Nguyen after the Nooksack Tribal Gaming Commission notified the Washington State Gambling Commission of pending criminal charges against Mr.

Nguyen. Special Agent Sullivan prepared Case Report No. 2013-02152, admitted as Exhibit 1.

4. On August 2, 2013, a Whatcom County Deputy Prosecutor filed an Affidavit of Probable Cause Determination in Whatcom County Superior Court cause number 13-1-00889-3. The deputy prosecutor alleged that Mr. Nguyen had taken Suong Nguyen's (Mr. Nguyen's wife) resident alien and social security cards and kicked her in the head in the presence of their two children. Mr. Nguyen also threatened to cut Mrs. Nguyen with a knife, pressed a knife against her abdomen, and punched her in the throat with his fist. This occurred on July 30, 2013, at their home at 705 Marine Drive in Bellingham, Washington. Exhibit 2.

5. The Whatcom County Prosecuting Attorney filed an Information against Mr. Nguyen, also on August 2, 2013, alleging unlawful imprisonment-domestic violence (count I) and assault in the fourth degree-domestic violence (count II). Count I is a class C felony. Count II is a gross misdemeanor. Exhibit 3.

6. On February 3, 2014, the State filed a First Amended Information against Mr. Nguyen for assault in the third degree-domestic violence. This crime is a class C felony. Exhibit 4.

7. Also on February 3, 2014, Mr. Nguyen pleaded guilty to the crime of assault in the third degree. He made a Statement of Defendant on Plea of Guilty to Non-Sex Offense ("Statement"), entered that same day. In the Statement, Mr. Nguyen wrote what he did that made him guilty of assault in the third degree: "On July 30, 2013, in Whatcom County, Washington, during an argument, I accidentally with criminal negligence caused bodily harm to my wife, Suong T. Nguyen, accompanied by

substantial pain that extended for a period sufficient to cause considerable suffering to her.” Exhibit 5.

8. Also on February 3, 2014, the Court accepted Mr. Nguyen’s plea of guilty to the crime of assault in the third degree and entered Judgment and Sentence against Mr. Nguyen, imposing, among other things, jail time of 15 days and community supervision for eleven months. Exhibit 6.

9. The Commission recommends that Mr. Nguyen’s certification be revoked.

CONCLUSIONS OF LAW

From the foregoing Findings of Fact, the Administrative Law Judge now enters the following Conclusions of Law:

1. The Commission served the Notice of Administrative Charges on Mr. Nguyen on November 26, 2013, by placing one copy each in the United States mail – one by regular mail and the other by certified mail. The Commission received Mr. Nguyen’s request for an adjudicative hearing on December 16, 2014, twenty days after service on Mr. Nguyen. WAC 230-17-010(2)(a) and (b) require that the Commission receive the licensee’s request for hearing within twenty-three days after service of the same by regular mail and within twenty days after service of the Notice of Administrative Charges by certified mail and. The twentieth day after service on Mr. Nguyen was Monday, December 16, 2013. Therefore, Mr. Nguyen timely filed his request for a hearing on the issues raised in the Notice of Administrative Charges.

2. The issuance of the Notice of Administrative Charges occurred before Mr. Chen’s license was set to expire on December 9, 2013.

3. Neither the Commission nor the OAH lost jurisdiction to hear this case

because "once a professional disciplinary tribunal lawfully acquires jurisdiction over a proceeding, its jurisdiction continues until the proceeding is concluded." *Nims v. Wa. Board of Registration*, 113 Wn. App. 499, 506-07, 53 P.3d 52 (2002).

4. The Office of Administrative Hearings has jurisdiction to hear and initially decide this matter in an adjudicative proceeding. RCW 9.46.140; 34.05.413, 34.12.030(1), and WAC 230-17-025.

5. The Commission bases its proposed revocation of Mr. Nguyen's certification on the provisions of RCW 9.46.075(1), (4), and (8); RCW 9.46.153(1); and WAC 230-03-085(1) and (2). Conclusions of Law No. 5 through 8 contain the applicable language of these statutes and administrative rules.

5. RCW 9.46.075 is the Commission's legislative grant of authority to deny, suspend, or revoke gambling licenses or permits. "The commission may deny an application, or suspend or revoke any license or permit issued by it, for any reason or reasons, it deems to be in the public interest. These reasons shall include, but not be limited to, cases wherein the applicant or licensee, or any person with any interest therein:

(1) has violated, failed or refused to comply with the provisions, requirements, conditions, limitations or duties imposed by chapter 9.46 RCW and any amendments thereto, or any rules adopted by the commission pursuant thereto, or when a violation of any provision of chapter 9.46 RCW, or any commission rule, has occurred upon any premises occupied or operated by any such person or over which he or she has substantial control;

(4) Has been convicted of, or forfeited bond upon a charge of, or pleaded guilty to, forgery, larceny, extortion, conspiracy to defraud, wilful failure to make required payments or reports to a governmental agency at any level, or filing false reports therewith, or of any similar offense or offenses, or of bribing or otherwise unlawfully influencing a public official or employee of any state or the United States, or of any crime, whether a felony or misdemeanor involving any gambling activity or physical harm to individuals or involving moral turpitude; [Emphasis supplied.]

(8) fails to prove, by clear and convincing evidence, that he, she or it is qualified in accordance with the provisions of [chapter 9.46 RCW];

6. RCW 9.46.153(1) is a statute containing a separate statement of RCW 9.46.075(8):

It shall be the affirmative responsibility of each applicant and licensee to establish by clear and convincing evidence the necessary qualifications for licensure of each person required to be qualified under this chapter, as well as the qualifications of the facility in which the licensed activity will be conducted[.]

7. "Clear and convincing evidence" is a higher burden of proof than "preponderance of the evidence." See, *Hardee v. Department of Social and Health Services*, 172 Wn.2d 1, 6-18, 256 P.3d 339 (2011).

8. The Commission also relies on its administrative rules. WAC 230-03-085 states in plain language when the Commission will deny, suspend, or revoke an application, license or permit. "We [referring to the Commission] may deny, suspend, or

revoke any application, license or permit, when the applicant, licensee, or anyone holding a substantial interest in the applicant's or licensee's business or organization:

(1) commits any act that constitutes grounds for denying, suspending, or revoking licenses or permits under RCW 9.46.075;

(2) Has been convicted of, or forfeited bond on a charge of, or pleaded guilty to a misdemeanor or felony crime involving physical harm to individuals. "Physical harm to individuals" includes any form of criminal assault, any crime involving a threat of physical harm against another person, or any crime involving an intention to inflict physical harm on another person[.]

9. Mr. Nguyen pleaded guilty in 2014 to one count of assault in the third degree. The statute he violated is RCW 9A.36.031(1)(f): "A person is guilty of assault in the third degree if he or she, under circumstances not amounting to assault in the first or second degree: (f) With criminal negligence, causes bodily harm accompanied by substantial pain that extends for a period sufficient to cause considerable suffering." Additionally, he committed his crime against a family member; i.e., his wife. Consequently, Mr. Nguyen's conviction comes with the scope of the final clause of RCW 9.46.075(4), "any crime, whether a felony or misdemeanor, involving . . . physical harm to individuals[.]" [Emphasis supplied]. I conclude that, in committing this crime, Mr. Nguyen violated RCW 9.46.075(1) and (4).

12. Mr. Nguyen did not attend or testify in the hearing that he requested. The Commission has an understandable interest in keeping convicted felons from working in the gambling industry in this State. I conclude that Mr. Nguyen failed to come forward to prove that he is qualified to hold a gambling license, as required by RCW 9.46.075(8)

and RCW 9.46.153(1).

13. I conclude that Mr. Nguyen's certification should be revoked based

From the foregoing Conclusions of Law, NOW, THEREFORE,

INITIAL ORDER

IT IS ORDERED That the Mr. Nguyen's certification, number 69-34773, is **REVOKED**.

DATED at Tacoma, Washington, this 30th day of July, 2014.



John M. Gray
Administrative Law Judge
Office of Administrative Hearings

NOTICE TO THE PARTIES

Initial orders must be entered in accordance with RCW 34.05.461(3). WAC 230-17-085(1). An initial order becomes the final order unless a party files a petition for review of the initial order as explained in WAC 230-17-090. WAC 230-17-085(2). Petitions for review are governed by WAC 230-17-090:

"RCW 34.05.464 governs the review of initial orders." WAC 230-17-090(1).

"Any party to an adjudicative proceeding may file a petition for review of an initial order. "Parties must file the petition for review with us within twenty days of the date of service of the initial order unless otherwise stated. Parties must serve copies of the petition to all other parties or their representatives at the time the petition for review is filed." WAC 230-17-090(2).

"Petitions must specify the portions of the initial order the parties disagree with and refer to the evidence in the record on which they rely to support their petition." WAC 230-17-090(3).

"Any party to an adjudicative proceeding may file a reply to a petition for review of an initial order. Parties must file the reply with us within thirty days of the date of service of the petition and must serve copies of the reply to all other parties or their representatives at the time the reply is filed." WAC 230-17-090(4).

"Any party may file a cross appeal. Parties must file cross appeals with us within ten days of the date the petition for review was filed with us." WAC 230-17-090(5).

"Copies of the petition or the cross appeal must be served on all other parties or their representatives at the time the petition or appeal is filed." WAC 230-17-090(6).

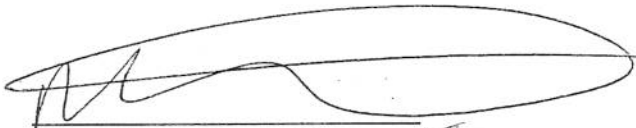
"After we receive the petition or appeal, the commissioners review it at a regularly scheduled commission meeting within one hundred twenty days and make a final order." WAC 230-17-090(7).

Certification of Mailing

I certify that I mailed true and correct copies of the **Initial Order Revoking Gambling**

License to the following parties, postage prepaid this 1 day of August 2014 at

Tacoma, Washington.



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Legal Secretary

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